

**United States Department of Labor
Employees' Compensation Appeals Board**

ANITA Y. BELL Appellant

and

**U.S. POSTAL SERVICE, MAIN POST OFFICE,
Richardson, TX, Employer**

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**Docket No. 06-58
Issued: January 19, 2006**

Appearances:
Anita Y. Bell, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On October 4, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' decisions dated January 19 and April 29, 2005, denying her request for reconsideration. The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal. The Board has no jurisdiction to consider the Office's decisions dated March 13 and August 19, 2003, denying her claim for a foot injury.¹ Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board does not have jurisdiction over the merits of the claim.

ISSUE

The issue is whether the Office properly denied appellant's request for reconsideration on the grounds that it was untimely and failed to show clear evidence of error.

¹ See *Algimantas Bumelis*, 48 ECAB 679 (1997); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

FACTUAL HISTORY

On December 28, 2002 appellant, then a 38-year-old customer service supervisor, filed an occupational disease claim alleging that she sustained an injury to her feet beginning in May 2001 caused by continuous walking on concrete floors necessitating surgery. She submitted medical evidence in support of her claim.

By decision dated March 13, 2003, the Office denied appellant's claim on the grounds that the evidence failed to establish that she sustained a diagnosed injury to her feet causally related to her employment.

Appellant requested reconsideration and submitted additional evidence.

By decision dated August 19, 2003, the Office modified its March 13, 2003 decision to reflect that her foot condition had been diagnosed, but affirmed the denial of appellant's claim on the grounds that the medical evidence was insufficient to establish that her diagnosed condition was causally related to factors of her employment.

By letter dated August 8, 2004, appellant requested reconsideration and submitted additional medical evidence.

By decision dated January 19, 2005, the Office denied appellant's request for reconsideration on the grounds that it was not timely submitted and failed to show clear evidence of error in the August 19, 2003 merit decision.

On January 27, 2005 appellant requested reconsideration. She submitted a copy of a U.S. Postal Service express mail receipt addressed to the Office, with a postmark date of August 17, 2004.

By decision dated April 29, 2005, the Office denied appellant's request for reconsideration on the grounds that it was not timely submitted and failed to show clear evidence of error in the August 19, 2003 merit decision.

LEGAL PRECEDENT

Section 8128(a) of the Federal Employees' Compensation Act² does not entitle a claimant to a review of an Office decision as a matter of right.³ This section vests the Office with discretionary authority to determine whether it will review an award for or against compensation.⁴ The Office, through its regulations, has imposed limitations on the exercise of its discretionary authority. One such limitation is that the Office will not review a decision denying or terminating a benefit unless the request for reconsideration is filed within one year of

² 5 U.S.C. § 8128(a).

³ *Thankamma Mathews*, 44 ECAB 765 (1993).

⁴ *Id.* at 768.

the date of that decision.⁵ The Board has found that the imposition of this one-year time limitation does not constitute an abuse of the discretionary authority granted the Office under 5 U.S.C. § 8128(a).⁶

Section 10.607(b) states that the Office will consider an untimely application for reconsideration only if it demonstrates clear evidence of error by the Office in its most recent merit decision. The reconsideration request must establish that the Office's decision was, on its face, erroneous.⁷

To establish clear evidence of error, a claimant must submit evidence relevant to the issue which was decided by the Office.⁸ The evidence must be positive, precise and explicit and must be manifest on its face that the Office committed an error.⁹ Evidence which does not raise a substantial question concerning the correctness of the Office's decision is insufficient to establish clear evidence of error.¹⁰ It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion.¹¹ To show clear evidence of error, the evidence submitted must not only be of sufficient probative value to create a conflict in medical opinion or establish a clear procedural error, but must be of sufficient probative value to *prima facie* shift the weight of the evidence in favor of the claimant and raise a substantial question as to the correctness of the Office's decision.¹² The Board makes an independent determination of whether a claimant has submitted clear evidence of error on the part of the Office, such that the Office abused its discretion in denying merit review in the face of such evidence.¹³

ANALYSIS

The Board finds that appellant's August 8, 2004 request for reconsideration postmarked August 17, 2004, was timely submitted to the Office.

The Office's procedure manual provides that the one-year time limitation for requesting reconsideration begins to run on the date of the original Office decision¹⁴ In this case, the one-

⁵ 20 C.F.R. § 10.607; *see also Alberta Dukes*, 56 ECAB ____ (Docket No. 04-2028, issued January 11, 2005).

⁶ *Thankamma Mathews*, *supra* note 3 at 769.

⁷ 20 C.F.R. § 10.607(b); *see also Donna M. Campbell*, 55 ECAB ____ (Docket No. 03-2223, issued January 9, 2004).

⁸ *Dean D. Beets*, 43 ECAB 1153 (1992).

⁹ *Leona N. Travis*, 43 ECAB 227 (1991).

¹⁰ *Darletha Coleman*, 55 ECAB ____ (Docket No. 03-868, issued November 10, 2003).

¹¹ *Leona N. Travis*, *supra* note 9

¹² *Darletha Coleman*, *supra* note 10.

¹³ *Pete F. Dorso*, 52 ECAB 424 (2001).

¹⁴ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.3(b)(1) (January 2004).

year time period for filing a request for reconsideration of the August 19, 2003 decision ended on August 19, 2004. As appellant's request for reconsideration was postmarked on August 17, 2004 her reconsideration request was timely filed within one year.¹⁵

CONCLUSION

The Board finds that the Office improperly denied appellant's request for reconsideration as untimely. The case is remanded for a review of appellant's timely request for reconsideration, and the evidence submitted,¹⁶ under the appropriate standard of review.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated April 29 and January 19, 2005 are set aside and the case remanded for further development consistent with this decision.

Issued: January 19, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

¹⁵ If submitted by mail, a request for reconsideration will be deemed timely if postmarked by the U.S. Postal Service within the time period allowed. If there is no such postmark or it is not legible, other evidence such as (but not limited to), certified mail receipts, certificate of service and affidavits, may be used to establish the mailing date. 20 C.F.R. § 10.607(a). Otherwise, the date of the letter itself should be used. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.3(b)(1) (January 2004).

¹⁶ The Board notes that appellant submitted additional medical evidence with her appeal to the Board, consisting of March 28 and April 11, 2005 medical reports.